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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

CHASOM BROWN, WILLIAM BYATT,
JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO,
individually and on behalf of all similarly
situated,

Plaintiffs,

v.

GOOGLE LLC,
Defendant.

Case No. 4:20-cv-3664-YGR-SVK

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' RENEWED REQUEST
TO DEPOSE GOOGLE CEO SUNDAR
PICHAI**

The Honorable Susan van Keulen

1 Plaintiffs Chasom Brown, William Byatt, Jeremy Davis, Christopher Castillo, and Monique
 2 Trujillo (“Plaintiffs”) filed a Renewed Request to Depose Google CEO Sundar Pichai (Dkt. ___,
 3 “Motion”). Having carefully considered the briefing, arguments, and documents submitted, and for
 4 the reasons set forth below, the Court **GRANTS** Plaintiffs’ Motion.

5 **I. Background**

6 On December 27, 2021, this Court granted Plaintiffs’ request to depose Mr. Pichai after
 7 carefully reviewing the parties’ submissions, including documents submitted in support. Dkt. 365.
 8 Although “many of the cited documents” did “not appear to bear any connection to Mr. Pichai,”
 9 some documents nonetheless “establish[ed] that specific relevant information was communicated
 10 to, and possibly from, Mr. Pichai.” *Id.* Accordingly, the Court granted Plaintiffs a limited deposition
 11 of Mr. Pichai of 2 hours. *Id.*

12 On January 10, 2022, Google filed a motion seeking relief from this Court’s Order. Dkt. 382.
 13 On April 4, 2022, Judge Gonzalez Rogers entered an order finding that “[t]he order at issue does not
 14 consider whether Mr. Pichai has ‘unique or superior personal knowledge’” and does not “address
 15 whether plaintiffs exhausted all less intrusive means of discovery with respect to Mr. Pichai.” Dkt. 523.
 16 Judge Gonzalez Rogers noted the record was not sufficient for the Court “to undertake the analysis
 17 itself” but reversed and remanded the decision “for further proceedings consistent with this order” and
 18 “without prejudice to renewing the request if the appropriate foundation is established.” *Id.*

19 On April 29, 2022, Plaintiffs filed an administrative motion notifying the Court they could (with
 20 the Court’s permission) submit additional evidence further establishing the requisite foundation. Dkt.
 21 565. In their motion, Plaintiffs noted their concerns “with issues Google raised that have further delayed
 22 the scheduling of Ms. Borsay’s deposition,” and requested permission to submit a renewed request to
 23 depose Mr. Pichai within 21 days of Ms. Borsay’s deposition. Dkt. 565. The Court asked for an update
 24 on Ms. Borsay’s deposition, Dkt. 596, and after receiving that update, entered an order requiring the
 25 parties complete Ms. Borsay’s deposition by June 30, 2022, and allowing Plaintiffs to submit a brief
 26 renewing their request to depose Mr. Pichai. Dkt. 602. Plaintiffs filed that brief, along with a supporting
 27 declaration and exhibits (including document metadata), on July 21, 2022. Dkt _____. Consistent with
 28

1 Judge Gonzalez Rogers' order, the Court now makes factual findings and legal conclusions showing the
2 appropriate foundation is established for the deposition of Mr. Pichai.

3 **II. Legal Standard**

4 "A party seeking to prevent a deposition" carries a *heavy* burden to show why discovery
5 should be denied." *Khan v. Boohoo.com USA, Inc.*, CV2003332GWJEMX, 2021 WL 3882969, at
6 *3 (C.D. Cal. July 28, 2021) (emphasis added) (internal quotation marks omitted). "[W]hen a
7 witness has personal knowledge of facts relevant to the lawsuit," like Mr. Pichai does here, "even a
8 corporate president or CEO is subject to deposition." *WebSideStory, Inc. v. NetRatings, Inc.*, No.
9 06CV408 WQH(AJB), 2007 WL 1120567, at *2 (S.D. Cal. Apr. 6, 2007). "In determining whether
10 to allow an apex deposition, courts consider (1) whether the deponent has unique first-hand, non-
11 repetitive knowledge of the facts at issue in the case and (2) whether the party seeking the deposition
12 has exhausted other less intrusive discovery methods." *In re Google Litig.*, No. C 08-03172 RMW
13 PSG, 2011 WL 4985279, at *2 (N.D. Cal. Oct. 19, 2011); *see also Liberty Mut. Ins. Co. v. Superior*
14 *Ct.*, 10 Cal. App. 4th 1282, 1286 (1992) (party seeking to depose "a corporate president or other
15 official at the highest level of corporate management ["apex"] ... [must] show[] good cause that the
16 official has unique or superior personal knowledge of discoverable information").

17 For the first consideration, courts have stressed that a party "need not prove conclusively
18 that the deponent certainly has unique non-repetitive information," but rather that the "corporate
19 officer may have any first-hand knowledge of relevant facts." *Finisar Corp. v. Nistica, Inc.*, No. 13-
20 CV-03345-BLF(JSC), 2015 WL 3988132, at *2 (N.D. Cal. June 30, 2015) (emphasis added);
21 *Powertech Tech., Inc. v. Tessera, Inc.*, No. C 11-6121 CW, 2013 WL 3884254, at *2 (N.D. Cal.
22 July 26, 2013) (party "not required to prove that [executive] certainly has such information," only
23 that he "may" have)). As for the second consideration, "exhaustion of other discovery routes" is an
24 important "consideration, not a requirement." *In re Transpacific Passenger Air Transportation*
25 *Antitrust Litig.*, No. C-07-05634 CRB (DMR), 2014 WL 939287, at *5 (N.D. Cal. Mar. 6, 2014)
26 (internal quotation marks omitted).

III. Analysis

Plaintiffs have submitted extensive evidence establishing that (1) Mr. Pichai has unique, superior, and personal knowledge about key issues in this case, including the perpetuation of known private browsing misconceptions, and that (2) Plaintiffs exhausted less intrusive means of discovery for this information. The documents Plaintiffs submitted reference Mr. Pichai either in the main text or in the metadata (showing Mr. Pichai received the document as part of one or more email distribution lists included in the emails).¹ Plaintiffs have also deposed over 20 former and current Google employees, including the recent deposition of Sabine Borsay, who wrote about critical decisions and statements by and to Mr. Pichai regarding Incognito. Motion at 1. Google witnesses repeatedly testified they had no recollection of what Mr. Pichai considered, said, or decided with respect to these key issues.

The chart below summarizes the evidence establishing Mr. Pichai's unique, superior, and personal knowledge about facts relevant to this case and Plaintiffs' exhaustion of less intrusive means to obtain this information.

Mr. Pichai's Unique, First-Hand & Superior Personal Knowledge & Involvement in Key Events & Decisions	Plaintiffs' Exhaustion of Less Intrusive Means to Obtain This Information Without Mr. Pichai's Deposition
<p>2015 [REDACTED] A 2015 Google study called "[REDACTED]" Ex. A (emphasis added).² [REDACTED] <i>Id.</i> (emphasis added). This document indicates Mr. Pichai had knowledge in 2015 about [REDACTED]</p>	<p>Plaintiffs exhausted less intrusive means of discovery, including through requests for production (e.g., RFPs 27 (Ex. B), 169 (Ex. C)) and through the deposition of multiple lower-level Google employees, to obtain information about [REDACTED] Motion at 1. Plaintiffs were unable to identify any produced copy of [REDACTED] <i>Id.</i> Plaintiffs also asked Google employees Sabine Borsay, Chris Palmer, and Adrienne Porter Felt about [REDACTED]</p>

¹ With the exception of Ex. M, submitted documents reference Mr. Pichai either in the main text or in the metadata. In Plaintiffs' last submission, Plaintiffs did not include metadata. Motion at 1 n.1.

² All exhibit references in this submission are exhibits to the Declaration of Rossana Baeza.

1		Ex. D, Borsay Tr. 205:13-17; Ex. E, Palmer Tr. 86:6-14; Ex. F, Felt Tr. 60:19-61:22.
2	2016 [REDACTED]	Plaintiffs exhausted less intrusive means of
3	[REDACTED]	discovery, including through requests for
4	In 2016 emails, Ms. Borsay [REDACTED]	production (e.g., RFPs 33 (Ex. B), 169 (Ex. C))
5	[REDACTED] Ex. G (emphasis added). Ms. Borsay wrote [REDACTED]	and through the deposition of lower-level
6	[REDACTED]	Google employees, to obtain information about
7	[REDACTED]	[REDACTED] Motion at 2.
8	<i>Id.</i>	Plaintiffs were unable to identify any document
9	A later email from Ms. Borsay to Google employee Chris Palmer [REDACTED]	revealing what discussions Google employees
10	[REDACTED]	had with Mr. Pichai about [REDACTED]
11	[REDACTED]	[REDACTED] <i>Id.</i>
12	Ex. H (emphasis added). Mr. Palmer [REDACTED]	None of the witnesses Plaintiffs deposed,
13	[REDACTED]	including Mr. Palmer, Ms. Felt, and Ms. Borsay,
14	[REDACTED]	were able to provide that information. Ex. E, Palmer Tr. 113:23-114:4 (testifying he
15	[REDACTED] Ex. I (emphasis added).	[REDACTED]; Ex. F, Felt Tr. Felt Tr. 122:14-24 (testifying she [REDACTED])
16	Ms. Borsay also wrote that Mr. Pichai was the one who [REDACTED]	[REDACTED]
17	[REDACTED]	Ms. Borsay, for example, [REDACTED]
18	[REDACTED]	[REDACTED]
19	[REDACTED]	[REDACTED]
20	Ex. J (emphasis added).	[REDACTED]
21	These emails establish that [REDACTED]	Ex. D, Borsay Tr. 258:17-260:23. She went as far as to [REDACTED]
22	[REDACTED]	[REDACTED] <i>id.</i> , Borsay Tr. 252:18-254:5, despite testifying the day earlier that [REDACTED]
23	[REDACTED]	[REDACTED] Ex. K, Calhoun Borsay Tr. 43:12-14. Like the other witnesses, Ms. Borsay
24	[REDACTED]	[REDACTED]
25	[REDACTED]	[REDACTED]
26	[REDACTED]	Ex. D, Borsay Tr. 266:8-20, 262:3-11, 253:7-25 (testifying she [REDACTED])
27	[REDACTED]	[REDACTED]
28	[REDACTED]	[REDACTED]

2019 Pichai & [REDACTED] A
February 2019 email [REDACTED]

Ex. L.³

Ex. N, and

Ex. O.

These documents establish Mr. Pichai has first-hand knowledge about [REDACTED]

Plaintiffs exhausted less intrusive means of discovery through the deposition of lower-level Google employees to obtain information about [REDACTED]

Motion at 2-3.

Google employees, such as Rory McClelland and AbdelKarim Mardini, [REDACTED]

Ex. P, McClelland Tr. 118:11-

18 [REDACTED] *id.* 120:8-10 [REDACTED]

[REDACTED]; *see also* Ex. Q, Mardini Tr. 317:12-319:18 [REDACTED]

Mr. Palmer, [REDACTED]

Ex. E, Palmer Tr. 187:7-

189:7 [REDACTED]

During the *Calhoun* deposition of Chetna Bindra [REDACTED]

Ex. R, *Calhoun* Bindra Tr. 218:11-15.

2019 Pichai & [REDACTED] In April 2019, Google employee AbdelKarim Mardini reported that [REDACTED]

Ex. S. Mr.

Mardini [REDACTED]

Id. (emphasis added).

These documents establish that [REDACTED]

Plaintiffs exhausted less intrusive means of discovery through the depositions to obtain information about [REDACTED]

Motion at 3.

Mr. Mardini testified [REDACTED]

Ex. Q, Mardini Tr. 334:21-335:11, 336:13-20. Plaintiffs also questioned [REDACTED]

³

Ex. M.

1		Ms. Twohill about this, and she [REDACTED]
2		[REDACTED]
3		Ex. T, Twohill Tr. 82:14-83:4.
4	2019 Pichai & Incognito [REDACTED]	Plaintiffs exhausted less intrusive means of
5	An April 2019 [REDACTED]	discovery by deposing Mr. Mardini, [REDACTED]
6	[REDACTED]	[REDACTED]
7	[REDACTED]	[REDACTED]
8	Ex. U (emphasis added).	Ex. Q, Mardini Tr. 327:24-
9	This document shows Mr. Pichai likely has	328:17. No deponents were able to provide any
10	superior, first-hand knowledge about [REDACTED]	information regarding Mr. Pichai's [REDACTED]
11	[REDACTED]	[REDACTED]
12	2019 Pichai & Incognito [REDACTED]	Plaintiffs exhausted less intrusive means of
13	[REDACTED] Internal Google emails from July	discovery, such as by deposing Google
14	2019 email discuss [REDACTED]	employee Ramin Halavati about this document.
15	[REDACTED]	Motion at 3-4.
16	Ex. V.	Mr. Halavati [REDACTED]
17	This document shows Mr. Pichai has first-	[REDACTED] Ex.
18	hand, superior knowledge about [REDACTED]	W, Halavati Tr. 99:11-100:2.
19	[REDACTED]	Plaintiffs also questioned another Google
20	[REDACTED]	employee (Sammit Adhya) [REDACTED]
21	2019 Pichai & Incognito [REDACTED]	[REDACTED] Ex.
22	An October 2019 [REDACTED]	X, Adhya Tr. 104:9-105:15.
23	[REDACTED]	Plaintiffs exhausted less intrusive means of
24	Ex. Y.	discovery through deposition testimony.
25	This document establishes Mr. Pichai has first-	Motion at 4.
26	hand, superior knowledge about [REDACTED]	[REDACTED]
27	[REDACTED]	[REDACTED]
28	[REDACTED]	Ex. Q, Mardini Tr. 371:5-373:5.

2021 Pichai & [REDACTED]
[REDACTED] In 2021, Ms. Twohill emailed Mr. Pichai [REDACTED]

Ex. Z.

Plaintiffs exhausted less intrusive means of discovery through the deposition of Ms. Twohill, [REDACTED]

Ex. T, Twohill Tr. 120:5-21 (testifying she

, *id.* 131:17-19 (testifying

).

Ex. AA. In 2009, when Google employees [REDACTED]

Ex. BB. Mr. Pichai [REDACTED]

Ex. CC.

These documents establish Mr. Pichai likely has direct knowledge about [REDACTED]

Plaintiffs exhausted less intrusive means of discovery through the deposition of Brian Rakowski, [REDACTED] Motion at 4-5.

Mr. Rakowski [REDACTED]

Ex. DD, Rakowski

Tr. 20:12-22:24.

Mr. Rakowski— [REDACTED]

Ex. DD,

Rakowski Tr. 212:14-214:25.

The evidence establishes Mr. Pichai has or more than likely has unique, superior, and personal knowledge of issues relevant to this case, and that Plaintiffs have sought this information through less intrusive means. Because the evidence far exceeds what has been deemed sufficient to depose CEOs in many other cases, it warrants at least 3.5 hours of deposition testimony. *See, e.g., Wonderland Nurserygoods Co. v. Baby Trend, Inc.*, 514CV1153JWHSPX, 2022 WL 1601402, at *3–4 (C.D. Cal. Jan. 7, 2022) (allowing 4-hour CEO deposition where party “made a plausible

showing” that CEO “may have unique knowledge” even though “efforts to use less intrusive discovery methods could have been more thorough”); *In re Google Litig.*, No. C 08-03172 RMW PSG, 2011 WL 4985279, at *2 (N.D. Cal. Oct. 19, 2011) (allowing deposition of former Google CEO Larry Page for three hours where party had shown he had “unique knowledge of facts that cannot be secured by other less intrusive means of discovery”); *Khan v. Boohoo.com USA, Inc.*, CV2003332GWJEMX, 2021 WL 3882969, at *2–3 (C.D. Cal. July 28, 2021) (allowing 4-hour CEO deposition where emails showed CEO was “hands on” and had “direct involvement” in relevant decisions); *Finisar Corp. v. Nistica, Inc.*, No. 13-CV-03345-BLF(JSC), 2015 WL 3988132, at *2 (N.D. Cal. June 30, 2015) (allowing CEO deposition where no other deponents were “able to testify to the contents of [relevant] conversations”); *In re Apple iPhone Antitrust Litig.*, No. 11CV06714YGR-TSH, 2021 WL 485709, at *3 (N.D. Cal. Jan. 26, 2021) (allowing 7-hour CEO deposition because as CEO, he had “unique and non-repetitive” knowledge of Apple’s business model); *WebSideStory, Inc. v. NetRatings, Inc.*, No. 06CV408 WQH(AJB), 2007 WL 1120567, at *3, *5 (S.D. Cal. Apr. 6, 2007) (permitting deposition of CEO with “unique, relevant knowledge” after party completed only one deposition, which “would aid in developing and refining a line of questioning” for CEO deposition); *Opperman v. Path, Inc.*, No. 13-CV-00453-JST, 2015 WL 5852962, at *2 (N.D. Cal. Oct. 8, 2015) (allowing CEO deposition where CEO “personally participated in” and also “appears” he “may have been involved” in relevant decisions).

IV. Conclusion

Based upon the foregoing, the Court **ORDERS** as follows:

- Google shall make Sundar Pichai available for 3.5 hours of deposition.
- Mr. Pichai’s deposition shall take place at least 10 days before Plaintiffs’ opposition to any summary judgment motion or start of trial, whichever comes first.

SO ORDERED.

DATED: _____

HON. SUSAN VAN KEULEN
United States Magistrate Judge